



Billing Code 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5909-N-69]

30-Day Notice of Proposed Information Collection for Public Comment under the Paperwork Reduction Act - Rental Assistance Demonstration (RAD) Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection described below will be submitted to OMB for review. By notice published on March 17, 2016, HUD solicited public comment on the proposed information collection for a period of 60 days. The purpose of this notice is to solicit public comment for an additional 30 days.

DATES: Comment Due Date: **[Insert 30 days after date of publication in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make public comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Marilyn M. Edge, Senior Advisor, Multifamily Housing Office of Recapitalization, Office of Housing, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone 202-708-3730, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Rental Assistance Demonstration allows Public Housing, Moderate Rehabilitation (Mod Rehab), Rent Supplement (Rent Supp), and Rental Assistance Payment (RAP) properties to convert to long-term project-based Section 8 rental assistance contracts. The documents that are the subject of this notice are those used to process and complete the conversion process for Public Housing, Mod Rehab, Rent Supp, and RAP properties.

On March 17, 2016, at 81 FR 14473, HUD published a notice in the Federal Register soliciting public comment on the RAD documents for a period of 60 days (60-Day Notice) in accordance with the PRA.

II. Overview of Significant Changes Made to the RAD Closing Documents

In response to public comments from 8 commenters including groups of commenters received on the 60-day notice, HUD made changes to the RAD Closing Documents to incorporate the substantial majority of comments, reduce public burden, clarify the meaning of the documents and make the conversions process smoother:

III. Public Comments on 60-Day Notice and HUD Responses

In response to the solicitation of comments, HUD received 6 public comments. The comments can be found on the www.regulations.gov website at <https://www.regulations.gov/#!docketBrowser;rpp=25;so=ASC;sb=docId;po=0;dct=PS;D=HUD-2016-0021>

General Comments

A commenter commended HUD's Office of Recapitalization on its efforts to update the RAD closing documents and, stated that, as a whole, the current package is a

great improvement and successfully consolidates many of the various riders, addendums and other areas where the industry has provided feedback into a more manageable and efficient set of documents. The commenter stated that in the spirit of creating even greater transactional efficiency HUD should take additional steps across the board. The commenter stated that there are a number of forms and templates used by HUD throughout the RAD closing process, including some exhibits and attachments, are formatted as difficult/impossible to edit or reformat Portable Document Files (PDFs). The commenter stated that this can make it difficult to make updates and edits (particularly for budget related documents) or reformat when needed. The commenter also stated that this can be particularly onerous if documents are not formatted to meet local jurisdictions recording format requirements, because in many jurisdictions, HUD's forms do not meet font and margin requirements, leading to delays and even the inability to properly record documents.

The commenter recommended that, in addition to the closing documents currently provided on the RAD website, HUD provide "blank and editable" MS Word and MS Excel templates of all RAD related documents on its website. The commenter also suggested that HUD reconsider which, if any, RAD documents it requires to be recorded and on what time frame. The commenter stated that, in addition to the formatting issues identified above, it may be difficult to provide evidence of recording in a timely fashion, particularly if the jurisdiction does not electronically record documents.

The commenter recommended that HUD permit developers to self-certify that documents have been submitted for recording or even waive the requirement entirely, or alternatively, that Transaction Managers should be empowered to waive document

recording requirements at their discretion. The commenter further recommended that for transfers of assistance under a new construction agreement, if HUD continues to expect the Use Agreement to be recorded, it would be helpful for HUD to issue a rider that describes the process and also commits HUD to release the Use Agreement if no HAP is ultimately signed. The commenter stated that the rider should allow for the term to run 15/20 years from HAP signing, or explain why an alternative term is used appropriately.

HUD Response: HUD thanks the many commenters for their attention to RAD and advice. HUD will consider publishing the final versions of these documents in blank and edible pdf and Word formats to simplify HUD's review with redlines based on comparisons. HUD requires the RAD Use Agreement as well as the Releases of Declaration of Trust and Declarations of Restrictive Covenants to be recorded and will specify the recording order in its closing instructions to the PHA and its counsel. For transfers of assistance under a new construction agreement, HUD will authorize release of the Use Agreement if no HAP Contract is ultimately signed. HUD has elected to not prescribe a separate Rider to cover this situation. HUD will also set the term of the HAP Contract at the signing of the HAP Contract.

RAD Conversion Commitment (RCC)

A commenter expressed appreciation for HUD's efforts to streamline and improve the RCC, stating that it will be a more useful document going forward, but provided the following general comments: The commenter asked that HUD consider providing a definition of PIC (PIH Information Center), and that the HAP Contract – generally defined as “HAP”, “Contract”, or “HAP Contract” should be referred to consistently as the “HAP Contract.” The commenter also suggested that HUD consider adding a box for

the approved escalation factor, or scheme, for the Reserve Fund for Replacements. The commenter stated that many investors or lenders will set this factor, or require that the reserve deposits be resized after a set period of time based on a new physical needs assessment. The commenter stated that setting an approved escalation in the RCC will minimize confusion over the HUD requirement and help avoid conflicting requirements between HUD, FHA, and other investors and lenders.

HUD Response: HUD has accepted all of these comments, except the comment relating to the escalation factor. The minimum escalation factor is governed by regulation, as set forth in the HAP Contract, but HUD has revised this section to clarify that other project parties may require additional deposits.

One commenter stated that while it generally believes the addition of the table on the first page of the RCC will lead to ease of use and clarity for the parties, the box entitled “Key Features of Covered Project,” with its list of items and blanket requirement to describe various elements of the transaction, seems to be very broad and open-ended. The commenter stated that it is conceivable that a project could meet many, if not nearly all, of the Key Features which would lead to an extensive narrative that would overtake the first pages of the RCC and defeat the purpose of the streamlined table design. The commenter encouraged HUD to either break out some of these items into separate boxes or move this description and feature to an exhibit. The commenter also encouraged HUD to add more definition to the required description to promote consistency in what is included or required by this section of the RCC.

HUD Response: HUD has accepted all of these comments.

A commenter commended HUD on its revamped RCC, stating that the new document will help PHAs, developers and HUD to successfully flag potential issues related to the closing much earlier in the process. The commenter stated that one of the primary issues that it sees arising with the RCC is related to the process in which the RCC is issued. The commenter stated that there are often resolvable problems and/or errors in the RCC when it is issued to the PHA that can result in substantive delays, particularly with debt and equity providers. The commenter recommended that to mitigate delays, HUD amend its RCC process to issue a draft RCC to the PHA prior to the final RCC. The commenter stated that this will allow the PHA and its development team to flag errors and make updates that would otherwise delay the closing process, and it would also make the closing process itself more efficient as it would mitigate the need for as many amendments. The commenter stated that under this scenario, HUD could require PHAs to respond within a fixed period of time (say two weeks) or assume the PHA has given its implied consent to the RCC. Alternatively, HUD could also establish a process to easily amend the RCC at closing.

HUD Response: HUD appreciates the commenter's insight and is considering further processing directions to support the revised RCC form.

Relocation and Civil Rights Concerns

A commenter stated that the RAD Form Documents are a critical part of ensuring the long-term affordability and tenant protections that are required by the RAD program. The commenter stated that these documents also have the potential to provide the necessary transparency surrounding the terms of the RAD conversion, which is currently lacking in many RAD jurisdictions nationwide. The commenter stated that members of

its organization and their tenant clients have experienced significant challenges in obtaining basic information about their local RAD conversion, and often have to resort to filing local public records act requests (which, in some cases, have still not obtained important information about the proposed conversion). The commenter stated that it believes that the lack of transparency and collaboration undermines the requirements of the RAD program and slows down a time-sensitive conversion process. The commenter stated that its comments are directed to striving to ensure that the RAD Form Documents include the strongest long-term affordability protections, are used as key tools for tenant education and participation, and are publicly accessible for enforcement and transparency purposes. In this regard, the commenter strongly encouraged HUD to expand the FHEO Accessibility and Relocation Checklist (the Checklist) to include other fair housing issues beyond accessibility and relocation. The commenter stated that including civil rights areas beyond fair housing and accessibility help to provide a more accurate picture of the potential fair housing concerns triggered by the RAD conversion, which would assist in FHEO's RAD fair housing review. The commenter stated that as part of this review, HUD should also inquire about what efforts the PHA has made to determine existing residents' preferences about new construction on the existing site or at new sites.

The commenter also encouraged HUD to require a written relocation plan and involve tenants in the drafting process as part of this Checklist. The commenter stated that requiring a written relocation plan would create the opportunity for increased transparency and tenant participation in a critical part of the RAD conversion that directly affects tenants' living environment and quality of life. The commenter stated, that at the very least, Section III of the Checklist should require PHAs to explain how they have

educated and will continue to educate and involve tenants in the relocation planning process, including attaching any materials that were distributed to tenants during the relocation planning process. The commenter stated that Section III of the Checklist should also inquire about what efforts the PHA and/or RAD property owners took to minimize the need for temporary tenant relocation, why temporary relocation is necessary with the proposed level of property rehabilitation, and how the PHA will keep track of residents during relocation. The commenter further suggested that PHAs should be required to provide relocated residents with quarterly updates during relocation so that they have some sense about when they will return to the property.

With respect to relocation plans, the commenter stated that written relocation plans should also identify the anticipated maximum number of vacancies that are required to carry out rehabilitation of the property and the time period for which units will be kept vacant. The commenter stated that some PHAs create vacancies in as many as 20 percent of the units in a property as far out as two years before RAD conversion, and that PHAs continue to receive subsidies for these units despite fewer people are housed at a property that is still a PHA unit. The commenter further stated that, in describing the likely housing markets and communities where tenants will relocate through HCV assistance, Section III of the Checklist should require PHAs to provide the current voucher success rates in the local community, including whether there is a local or state source of income law that includes HCVs as a protected source of income.

Another commenter commented on the RAD FHEO Accessibility Report (Signature Certification). The statement regarding HUD's accessibility requirements (2%

and 5%) should be removed based on an inaccurate reference to the section 504 regulations.

HUD Response: HUD will consider these comments further, consistent with fair housing and civil rights legal requirements. HUD anticipates that it will publish, consistent with the Paperwork Reduction Act requirements, a further revised Checklist.

Financing Plan

A commenter strongly urged HUD to take steps to require evidence of tenant participation in the RAD conversion process as part of the Financing Plan submission, including the educational materials that were provided to tenants prior to and since the Commitment to enter into a Housing Assistance Payment Contract (CHAP) was issued. The commenter proposed adding “Evidence of Tenant Participation” as a separate requirement and section (#22) in the Financing Plan. The commenter stated that this section should require PHAs to show evidence of tenant education and participation, that has occurred until this point, as well as future plans for tenant education and involvement, including but not limited to tenant involvement in: planning discussions about any proposed demolition or reduction of units, changes in unit configuration, the scope of work and timeline for proposed rehabilitation or new construction, temporary relocation planning, transfers of assistance, changes in ownership, changes in rent levels, proposed changes to waiting list setup and procedures, and any programmatic or regulatory waivers that the PHA is seeking or has received from HUD or any state or local entity. The commenter stated that tenant participation and education is critical to a successful and enduring RAD conversion, especially as part of broader conversations around the community’s aspirations for community development. The commenter stated that PHAs

should be held accountable for adequate and effective tenant education and participation during the RAD conversion process.

HUD Response: HUD appreciates this comment, and suggests that the appropriate vehicle for this is the required tenant meetings, as well as the PHA's PHA/MTW Plan or Significant Amendment to the PHA/MTW Plan. Documentation of the first two resident meetings is required with the RAD application and the third meeting is required before closing, so submission of documentation with the Financing Plan would not be consistent with the RAD Notice. The Financing Plan has been amended to require a summary of a resident's comments received between CHAP and Financing Plan.

A commenter encouraged HUD to make the following changes to existing text in the Financing Plan:

- PHAs should be required to explain why there is any difference in the number of units under the ACC versus the number of units converting to RAD. Will those units be demolished and not replaced under the de minimis exception (greater of 5 percent of the number of units under ACC immediately prior to conversion or 5 units), have those units been vacant for more than 24 months at the time of RAD application, or will those units not convert to RAD because of a Section 18 demolition or disposition?
- PHAs should be required to provide the scope of work and expected costs (total and average per unit), including a narrative of the major rehabilitation or construction work that is expected to be done.

- If a PHA is seeking Section 18 approval, the PHA should be required to explain whether they are seeking demolition or disposition approval and how such approval would further the goals of the RAD program.

HUD Response: HUD has revised the Financing Plan form to more fully address these concerns.

A commenter suggested that HUD should also require the PHA to indicate how and for how long it intends to preserve its interest in the property, preferably via ground lease, and that HUD should require PHAs to seek input from and make this form available to tenants and local tenant advocates prior to submission and at any time thereafter upon informal request.

HUD Response: If there is a ground lease, its term will be considered along with the RAD HAP Contract term during the evidentiary review of documents provided after RCC. The RAD statute (Consolidated and Further Continuing Appropriations Act or 2012 (Pub. L. No. 112-55, enacted November 18, 2011), as amended, and as implemented by the RAD Notice (PIH 2012-32 (HA) REV-2) permits interests other than ground leases to preserve the affordable housing property. This information will be discussed with the tenants and community as part of the PHA's PHA Plan or MTW Plan process.

Another commenter stated that with respect to the Development Budget, page 5 of the RAD Financing Plan, in the sources of funds section, the "Prior Year Public Housing Capital Funds" should be changed to "Public Housing Capital Funds" and "Take Back Financing" should be changed to "Seller Take Back Financing (Acquisition)".

HUD Response: HUD agrees and has made this change.

The commenter also stated that in the operating pro forma section, the maintenance line item and operations should be separated, and that the term “maintenance” is misspelled.

HUD Response: HUD has corrected the spelling but believes that maintenance and operations should be considered together.

Another commenter stated that the revised Financing Plan delays Fair Housing review (Upfront Civil Rights review, and Site and Neighborhood Standards review) to coincide with the Financing Plan review, but that given that the Fair Housing review often can cause significant delays in the processing of a transaction, the commenter stated that it believes that the Fair Housing review could and should begin prior to the Financing Plan submission. The commenter stated that PHAs are consistently encouraged to submit Fair Housing documentation for review as early as possible. The commenters stated that the current Financing Plan reads as though PHAs should be submitting the Fair Housing review with the Financing Plan and not before. The commenter stated that it believes this is confusing and counter to HUD’s previous guidance.

HUD Response: The Financing Plan requires evidence of approval of most upfront civil rights reviews for the items that require longer lead times. HUD anticipates issuing for comment a revised Checklist, as well as a RAD Notice on Fair Housing, Civil Rights and Relocation with improved guidance on the timing of these submissions and reviews.

Another commenter suggested that, in the Financing Type box in Section 1, HUD consider adding “FHA Insured Mortgage” to “Financing Type”. The commenter also

suggested that, in Paragraph 3 of Section 1, HUD include instruction to the applicant on the expectation regarding the timing of the release of the Declaration(s) of Trust.

The commenter noted that while the RAD Notice only requires a legal opinion when a PILOT will continue, they have experienced similar requests when a property tax exemption, generally, will continue post-closing. The commenter requested clarification on the extent of the requirement. Further, they proposed the following revision to Section 9's third sentence: "If PILOT will continue after conversion, upload a draft legal opinion based on state and local law of continuation of PILOT after conversion that will be execute at the time of closing." The commenter also suggested that in Paragraph 8 of Section 12 HUD insert "will" after "PHA" in "whether the PHA still be."

HUD Response: HUD has incorporated the four recommendations suggested by this commenter.

A commenter also noted a lack of detail regarding the supporting documentation that is required for the release of the Declaration(s) of Trust at closing in Section 17. They requested illustrative examples of supporting documentation that would support releasing the DOT at closing and when such supporting documents must be submitted to HUD.

HUD Response: HUD has given some guidance on this in the RAD Notice, but prefers to consider this type of request on a case-by-case basis with specific factual information provided by the PHA.

The commenter proposed moving Section 18 to the end of the Financing Plan to be clear that the certification applies to the entire Financing Plan. Lastly, the commenter

suggested that HUD replace “Appendix C” in Paragraph 3 of Section 19 with “Appendix III” in order to remain consistent with that RAD Notice.

HUD Response: HUD agrees and has made these changes.

RAD Conversion Commitment (RCC) (First Component)

A commenter stated that because the issuance of the RCC indicates HUD’s approval of the Financing Plan and occurs approximately 30-90 days before closing, PHAs should be required to provide evidence of tenant education and participation that has occurred until that point, as well as future plans for tenant education and involvement, including but not limited to: tenant involvement in planning discussions about any proposed demolition or reduction of units, changes in unit configuration, the scope of work and timeline for proposed rehabilitation or new construction, temporary relocation planning, transfer of assistance, changes in ownership, changes in rent levels, proposed changes to waiting list setup and procedures, any programmatic or regulatory waivers that the PHA is seeking or has received from HUD or any state or local entity, and financial support logistics for legitimate tenant organizations moving forward.

The commenter stated that tenant participation and education is critical to a successful and enduring RAD conversion, especially as part of broader conversations around the community’s aspirations for community development. The commenter stated that PHAs should be held accountable for adequate and effective tenant education and participation during the RAD conversion process, and that the RCC should indicate that (1) if an MTW agency chooses to convert assistance to PBRA under RAD, the converting RAD project(s) will no longer be included as part of the PHA’s MTW program, and (2) if an MTW agency chooses to convert assistance to PBV under RAD, the converting RAD

project(s) will continue to be included in the PHA's MTW program, subject to the observance of RAD requirements as set forth in applicable statutes, regulations, and policies. The commenter concluded its comment on this matter stating that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request. The commenter stated that since the RAD program was enacted, tenants and their advocates have faced significant challenges, including a lack of good faith cooperation and transparency by PHAs, when trying to learn and become involved in the proposed RAD conversion, and HUD should take affirmative steps to advance the transparency and tenant participation goals of the RAD program.

HUD Response: HUD appreciates this comment, and suggests that the appropriate vehicle for much of this discussion with tenants are the required tenant meetings, as well as the public comment period regarding the preparation of or amendment of the PHA's PHA Plan or MTW Plan. HUD has determined that other elements of this comment (such as the implications of participation on MTW agencies) are adequately addressed in the RAD Notice.. HUD will consider whether additional guidance on these topics is appropriate outside the context of the Financing Plan template. In support of this comment, the Financing Plan template has been amended to require Evidence of Approval of Amendment to the PHA or MTW Plan if not contained within the Plan.

Another commenter requested that HUD's Office of General Counsel should review and confirm the non-dwelling assets of the project proposed for conversion and provide information to the PHA prior to the issuance of the RCC. The commenter also

stated that the PHA should provide a courtesy (un-signed) copy of the RCC or the approved Financing plan committee term sheet prior to the issuance of the RCC.

HUD Response: HUD's Office of Public Housing has instituted a process for the review and confirmation of the treatment of non-dwelling assets and works with the PHA on this information prior to the issuance of the RCC. HUD will consider the commenter's suggestion of providing draft RCCs as it develops further processing directions to support these new forms.

Another commenter suggested that HUD consider revising the box titled "Unit Mix of Converting Project" on page 1 to include the Covered Project. The commenter also suggested in the "Identify amount and source of any other reserves or other funds that will be transferred to Project Owner upon Closing for uses other than to capitalize reserves" box in the table on page 2, if such funds refer only to PHA funds to be used for such purposes, insert "from the PHA" prior to "to Project Owner." The commenter also suggested that HUD replace "initial repairs" in the "RAD Rehab Assistance Payments" box in the table on page 2 with "Work" to be consistent with the term defined in Section 19. The commenter also suggested that in the "Green practices" box in the table on page 2, HUD delete "so-called" and reference Section 1.4.A.2 of the RAD Notice, which describes industry-recognized green building certifications. The commenter suggested that in the first sentence of the opening paragraph on page 3 HUD replace "property" with "assistance from the Converting Project to support the Covered Project" to clarify the definition of Project. The Commenter suggested HUD replace "transferring" with "conveying," in the last sentence of the opening paragraph, to make clear such applicability is separate from any transfer of assistance that may or may not take place as

part of the conversion. The commenter also noted that if the PHA is not conveying the Project, all references to Project Owner in the RCC should mean the PHA.

HUD Response: HUD has incorporated all of these comments except for the green practices box which has been deleted because it is no longer a ranking factor in the RAD application.

RCC – Applicable HUD Regulations and Requirements

A commenter suggested that the first sentence of Section 1 could be revised by removing “PHA and” consistent with the change noted in the opening paragraph regarding when the PHA will be referenced in the RCC as the Project Owner. They additionally suggested replacing “Agreement” with “Commitment” in the second sentence to be consistent with how the RCC is defined. With regard to the conflict provisions in the section, the commenter recommended that any conflicts between the RCC and any other HUD requirements should be identified and resolved, therefore allowing this provision to be removed and providing greater certainty to RAD program participants.

HUD Response: HUD has revised the terminology as suggested. However, it has maintained its discretion in resolving any conflicts whenever they may arise.

RCC – Acceptance of Commitment (Section 2)

A commenter submitted a comment on the Acceptance of Commitment / Expiration at page 3. The commenter stated that the Commitment should terminate 60 days from the date of the RCC issuance instead of 30 days. The commenter stated that if the transactions contemplated by this commitment are not closed to HUD's satisfaction within 180 days from RCC, this commitment will expire at 90 days. The commenter

stated that PHAs need more time to close the transaction than 90 days, especially if the reviews from HUD take longer than expected or if the changes in the RCC approval are inconsistent with the financing.

Another commenter stated that Section 2(c) permits HUD to declare the RCC “null and void” without notice or an opportunity to cure, “if the PHA or Project Owner fails to take any action, or deliver any information, called for under the agreement within the time frames contemplated . . .” The commenter stated that this is unnecessary and overreaching. The commenter stated that if the PHA and Project Owner fail to meet HUD’s criteria to close, the RCC expires after 90 days (unless HUD extends it), and, in particular, failure to complete an activity should not nullify the RCC unless it means the HUD closing criteria cannot be met. In addition, notice and cure should be available under the failure to take action provision.

Another commenter suggested that in Sections 2(a), 2(b), and 10(c) “the date hereof” is replaced with “the date this Commitment is executed by HUD” since the RCC is not dated.

HUD Response: HUD has made some adjustments to the acceptance and expiration of the Commitment to clarify the timing and process for extension or termination of an RCC.

RCC – (Section 3)

A commenter stated that Section 3 indicates that the Closing Checklist will list all documents to be submitted to and approved by HUD. The commenter stated that Section 6(e) of the RCC indicates that all documents required by lenders for the transaction must be acceptable to HUD in HUD's sole discretion, and Section 21 states that closing is

conditioned on the legal review and approval of the Closing Documents. The commenter asked that HUD clarify what documents must be submitted to HUD for review and approval, as there is a growing misunderstanding on this point throughout the industry and inconsistencies depending on which HUD Field Office is reviewing the RAD closing package. The commenter suggested looking to HUD's mixed-finance requirements for guidance on this point and focusing on the RAD specific documents with HUD having the right to request and review additional documents as needed. The commenter stated that specifically identifying in advance what documents are required to be submitted to HUD for review will allow parties to the transaction to make adjustments to meet deadlines for submissions in a timely fashion, as well as provide consistent expectations for all HUD Field Offices and all RAD program participants.

HUD Response: Exhibit E to the RCC provides the Closing Checklist of the required documents.

RCC – Public Housing Requirements (Section 4)

This section has added language that states that the Converting Project remains subject to all applicable public housing requirements until the effective date of the HAP Contract. The commenter stated that this sentence sets up several regulatory conflicts because, according to the commenter, there can be as much as a month between the closing of the RAD transaction and the effective date of the HAP Contract. The commenter stated that it believes that this requirement unfairly puts PHAs in the crosshairs of compliance, as it is unclear how to comply with the RAD closing documents while simultaneously complying with public housing requirements until the effective date of the HAP Contract. The commenter stated that given the enumeration of

requirements in (a) – (c) it is not sure that this additional sentence is necessary, but to the extent HUD believes that it is, the commenter stated that the “Closing” is the more appropriate reference here. The commenter encouraged HUD to re-examine this requirement and issue additional guidance to assist PHAs with compliance.

Another commenter stated that Section 4 should be revised to include the Project Owner's acknowledgement that the Converting Project remains subject to applicable public housing requirements until the effective date of the HAP since the Project Owner will take title to the Project at closing. The commenter stated that, in addition, "all applicable public housing requirements" should be clearly defined and the defined term should be incorporated throughout the enumerated assurances. The commenter also suggested that the Consolidated Owner Certification should be revised at Section 1 to mirror the final changes to Section 4 of the RCC.

HUD Response: HUD has clarified section 4 and the description and scope of applicable HUD requirements.

RCC – Public Housing Requirements (Section 4) (Form HUD-52624)

A commenter made several comments regarding Form HUD-52624. The commenter stated that it believes the reformatting of the RCC to place important information in the initial table will be beneficial to all parties in the transaction. The commenter stated that it wanted to confirm that in instances where assistance is not being transferred, the Covered Project and the Converted Project information will still be completed with duplicate information. The commenter stated that completing the table in this manner is necessary to ensure that the defined terms "Covered Project" and "Converted Project" are accurate throughout the form. The commenter also stated that

while the revised formatting will likely provide for more efficient processing of the transaction, providing a draft RCC for review prior to HUD execution would be helpful to avoid inadvertent mistakes that can lead to unnecessary amendments. The commenter offered specific wording changes to this form.

HUD Response: As suggested, HUD has made significant changes in response to this comment and revised the initial table and information to be checked or explained in the new key features section.

RCC – HUD Review of Project Ownership (Section 5)

A commenter stated that it believes HUD should allow for flexibility in this section by adding “unless approved by HUD” at the end. The commenter stated that some conversions have required a limited or early transfer of land to demonstrate site control for purposes of meeting tax credit requirements.

Another commenter suggested that an exception to the prohibition on transfer of ownership interests in the Project prior to closing should be added to allow for site control commitments that may be required as a condition of participation in the Low Income Housing Tax Credit program. The commenter provided the following language: “PHA shall not transfer any ownership interest in the Converting Project prior to the Closing except for site control commitments that may be required as a condition of participation in the Low Income Housing Tax Credit program.”

HUD Response: HUD is maintaining the current language in Section 5. HUD does not believe that standard practice or typical LIHTC transactions should require transfer prior to Closing.

RCC – Closing Documents (Section 6)

A commenter stated that Section 6(c) which defines closing documents to be provided to HUD, including “any documents required by lenders or other parties to the transaction, which must be acceptable to HUD in HUD’s sole discretion.” Because the number and type of non-RAD documents to be submitted may change over time, we recommend more flexible language as shown in the markup that the commenter advises it has provided. The commenter also stated that HUD’s review should relate to compliance with program requirements, and that the commenter had previously noted to HUD its concern that the list of documents collected and reviewed is overbroad for HUD’s purposes and requires an investment of time by HUD that may not be necessary to ensure that RAD program requirements are met. The commenter stated that its suggested revisions to this section are aimed at giving HUD the flexibility to determine what needs to be submitted as a Closing document as transactions, and the program, evolve.

Another commenter stated that in Section 6, the definition of Closing Documents should be consistent with the documents required to be submitted to HUD pursuant to Section 3. The commenter stated that internal consistency cannot currently be confirmed without a sample Closing Checklist to review. The commenter asked HUD to consider adding the Consolidated Owner Certification in the list of Closing Documents. The commenter stated that not all of the documents listed in (a) through (d) are HUD form documents and that Section 6 should be revised to reflect this.

This same commenter stated that in Section 6(d), no changes have been proposed to the Certification and Assurances, and HUD should consider revising the Certification and Assurances to clearly permit post-closing certification of changes. The commenter

stated that such clarification could be achieved by removing Paragraph 2 from the Certification and Assurances and instead requiring a post-closing certification similar to the Certification of No Changes used in mixed-finance transactions be submitted with the final RAD transaction docket to HUD. The commenter also stated that in Section 6(e), including any document required by "other parties" as a Closing Document is confusing and exceptionally broad. The commenter stated that a more clearly defined list of documents should be provided. The commenter stated that, as currently stated, Section 6(e) would require HUD acceptance of development documents, zoning applications, plans and specifications, and construction contracts. The commenter offered revisions to section 6(e).

HUD Response: HUD has revised this section in accordance with these comments.

RCC – Use Agreement Priority (Section 7)

A commenter stated that the requirements of Section 7 for use agreement recording priorities have been uneven. The commenter stated that HUD has approved recording the RAD Use Agreement after recording a deed or ground lease in some circumstances but not others, and this has significant implications for the ability to raise sufficient LIHTC equity in situations where an existing project is being sold to a new partnership and the acquisition credits are generated by the sale. The commenter stated that for practical purposes, when the PHA ground lease is subordinate to the RAD Use Agreement it could significantly diminish the appraised value of the property and thus the amount of acquisition LIHTCs. The commenter stated that for all intents and purposes, the property remains public housing throughout the process whether or not the RAD Use

Agreement is recorded prior to or after recording of the ground-lease (or deed) – the only practical result of this inconsistent application is diminishing the amount of potential subsidy flowing to the property. The commenter recommended that HUD issue written guidance to transaction managers explicitly directing them to approve recordation of the ground lease (or deed) prior to the RAD Use Agreement when leveraging LIHTCs generated through the acquisition of an existing project.

Another commenter stated that it sought clarification of what HUD requires regarding subordination to the RAD Use Agreement of existing documents recorded prior to the RAD Use Agreement. The commenter stated that Section 7 of the RCC requires "any and all liens and/or encumbrances against the Covered Project" be subordinated to the RAD Use Agreement. The commenter stated that the Definitions Section of the RAD Notice indicates that the RAD Use Agreement "must be recorded in a superior position to any new or existing financing or other encumbrances on the Covered Project." Section 1.4.B.1.i of the RAD Notice requires that the RAD Use Agreement must "be recorded in a superior position to all liens on the property." The commenter further stated that Sections 1.6.B.4.i and 1.7.A.4.i of the RAD Notice require that "[a]ll loans made that are secured by Covered Projects must be subordinate to a RAD Use Agreement." This same commenter further stated that based on these references and other guidance provided by HUD, it seems the essential requirement is that the RAD Use Agreement controls the operation of the RAD units and survive foreclosure of any other liens. The commenter stated that, however, not all encumbrances include foreclosure rights or other remedies that would jeopardize the RAD Use Agreement. The commenter stated that it believes further policy and guidance on this issue is needed rather than a blanket requirement that

"all liens and/or encumbrances" against the property be subordinated to the RAD Use Agreement. The commenter stated that such a requirement dictates those utility easements, subdivision plats and other documents that do not create any third-party foreclosure rights and are arguably benign to the enforcement of and compliance with the RAD Use Agreement must be subordinated to the RAD Use Agreement prior to closing. The commenter stated that if a document of record does not impact the continued effectiveness of the RAD Use Agreement nor affect HUD's enforcement of and the Owner's compliance with the RAD Use Agreement, then subordination is overly burdensome and unnecessary.

The same commenter stated that, in Section 7, HUD should consider clarifying the title documentation to be provided for the Converting Project and the Covered Project. The commenter stated that a title report alone is likely acceptable for the Converting Project in instances of transfers of assistance, but that a title commitment or an owner's pro forma title policy may be more appropriate for the Covered Project in conversions involving the addition of financing to be secured by the Covered Project in order to show all documents that will be recorded at closing. The commenter asked HUD to consider the following revisions to Section 7 to address the above comments

HUD Response: HUD appreciates these concerns and the circumstances which have dictated different recording order. HUD has further clarified this section and inserted some of the commenter's suggested language; however, unless otherwise approved by HUD, the RAD Use Agreement shall be superior to any and all liens and/or encumbrances against the Covered Project and HUD has provided examples of such liens and encumbrances. HUD will require the Project Owner to obtain such consents or

subordination agreements and have such documents executed as HUD may determine necessary to establish priority.

RCC – Tax Financial and Legal Consequences (Section 9)

A commenter stated that Section 9 includes a statement that “parties to the transaction are represented by competent counsel” and the commenter asked that HUD delete this language. The commenter stated that the representation is not a “consequence” and the topic is already addressed more appropriately in Section 21.

Another commenter stated that in Section 9, the second sentence should be deleted since legal representation is covered by Section 21, and that if not deleted, HUD should replace "Parties to the transaction" with "PHA and Project Owner" since there are numerous parties involved in the transaction beyond the PHA and Project Owner.

HUD Response: HUD has deleted this language as requested.

RCC – Owner Certifications (Section 10)

A commenter stated that Section 10(a) as revised can be interpreted to extend beyond notices required by RAD, and that "Program" is not defined in the RCC or the RAD Notice.

A commenter stated that, in Section 10(c), add "unless otherwise approved by HUD" to the end of the sentence. The commenter stated that consideration should also be given to how anticipated changes to the relocation notice will impact this certification.

Another commenter stated that it believes the representation in Section 10(c), is problematic since the standards and guidance on relocation continues to evolve. The commenter stated that currently HUD may approve relocation prior to the issuance of the

RCC and may conduct transfers in accordance with its ACOP and requested that HUD consider their suggested language.

A commenter stated that Section 10(d) is overly broad and burdensome and should be limited to debarment, suspension, or proposed debarment of the Project Owner. The commenter stated that audits and investigations could presumably prevent a PHA from closing a RAD conversion when such actions may not be material or related to the conversion. The commenter stated that the Section 10(d) certification should be revised and that the self-effectuating re-certification of the statements included in Section 10 by executing the transaction documents should be removed and the certifications should be added to the Consolidated Owner Certification.

Another commenter similarly stated that Section 10(d) is overly broad and would prohibit parties with closed OIG audits, routine financial audits, or Voluntary Compliance Agreements from participating. The commenter stated that this language needs to be revised, and that it is unclear why the breadth of this representation is required, and HUD could protect its interests with narrowed language.

Another commenter stated that while it understands the motivation behind the Section 10(d) certification and concurs that the language in this section itself is so broad that is both unreasonable and incredibly burdensome, it is an unfortunate nature of the business that any portfolio owner or PHA of a certain size is likely to have an open administrative proceeding, audit or investigation. The commenter stated that these are often times random, curable or a result of a frivolous complaint. The commenter stated that the language in the RCC is so broad and undefined that many private developers would be unwilling to sign the RCC without amendments. The commenter recommended

that, at a minimum, HUD should update this provision to provide an explicit and detailed list of open covered events or actions that truly warrant the HUD's ongoing concern and reporting. The commenter stated that disclosure of minor items outside the scope of the "bad acts" list should not be required, and further recommended Section D be eliminated entirely from the RCC as it is duplicative of numerous other due diligence procedures.

HUD Response: HUD has adopted many of these comments and their suggested language.

RCC – Changes to the Commitment (Section 13)

The commenter stated that it is concerned that HUD's ability to declare the RCC null and void is not necessary to achieve HUD's goals and opens the door to potentially arbitrary actions. The commenter stated that if the PHA and Project Owner meet HUD's closing requirements they close, and if they don't, the RCC expires after 90 days. The commenter requested that HUD please see suggested edits in the document provided by the commenter.

A commenter stated that in Sections 13 and 14, the level of change warranting amendment to the RCC should be the same. The commenter stated that currently the standard is "substantial" changes to the Financing Plan and "material" changes to the Sources and Uses. The commenter stated that, in addition, a clearer understanding of the definition of substantial or material would be beneficial to all parties involved in the transaction.

HUD Response: HUD has replaced "substantial" with "material" for the standard in determining whether HUD may require an amendment to the RCC and has removed

the sentence regarding when the RCC would be voided for economic, feasibility, or other reasons.

RCC – Sources of Funds (Section 14)

A commenter stated that this section is a little hard to follow and confusing as written, and suggested adding subsection labels and other clarifications. The commenter stated that some liens, such as preexisting utility liens, will generally stay superior to the RAD Use Agreement, however, this has not been problematic in the eyes of field counsel in transactions closed to date.

Another commenter stated that in Section 14, HUD should consider deleting the second sentence, “Any and all encumbrances on title must be subordinate to the RAD Use Agreement”, which is duplicative of the requirements of Section 7. This same commenter suggested that in the sixth and seventh sentences of Section 14 HUD should insert “public housing” prior to “funds”. The commenter stated that Section 14 requires public housing funds advanced from the PHA to be deposited into an account covered by a General Depository Agreement (GDA), but that Section 1.13.B.3 of the RAD Notice states that a GDA is required when no new debt will be utilized in the transaction and that the funds can be held by the lender in instances when new debt is involved in the transaction. The commenter stated that Section 14 should be clarified accordingly

HUD Response: HUD has significantly rewritten this section in response to these comments and to reflect current fund processing.

RCC – Planned Construction and Rehabilitation (Section 19)

A commenter stated that unnumbered paragraph 2 requires the PHA and Owner to “represent, warrant and certify to HUD that the sources of funds are sufficient to pay

for the construction and/or rehabilitation outlined on Exhibit D.” The commenter stated that this seems like a guaranty, and should be softened, or alternatively allow the parties to state that they have no knowledge that funding is not sufficient.

The commenter stated that with respect to Section 19(a), as written, this section could be read to apply the requirements of these cross-cutting requirements, without regard to whether or not the regulations would be triggered by their terms. The commenter stated that adding “as applicable” in a few places will help minimize confusion. The commenter stated that subsection (vii) cites to Section 3 for definitions of “construction” and “rehabilitation,” but the commenter stated that it could not find the definitions in the Section 3 regulations in 24 CFR part 135.

Another commenter recommended that throughout Section 19, HUD should delete references to “PHA”. The commenter stated that the PHA should not have to certify to matters related to construction and rehabilitation since in most conversions the Project Owner controls the decisions and process regarding the Work. The commenter stated that with the change noted in the opening paragraph in instances where the PHA is the Project Owner, this certification as revised remains applicable. The commenter asked that HUD replace “construction and/or rehabilitation outlined on Exhibit D” with “Work.” This same commenter stated that in Section 19(a)(v), the leading quotation mark around “alterations” should be moved to include “other alterations” consistent with the cited regulation, and that in Section 19(c), HUD should replace “earn or receive any cash flow distributions” with “withdraw or take any Distributions” to be consistent with the definition of Distribution as provided in the RAD Notice.

A commenter stated that Section 19(c) prohibits the Owner from earning or receiving cash flow until “written HUD acceptance of the completed work.” The commenter stated that except for FHA-insured projects, the commenter knows of no such procedures or requirements for HUD to accept the work. The commenter stated that, for example, in PBV the PHA as contract administrator reviews and accepts completed work. The commenter asked that HUD delete and issue additional guidance once HUD has developed a process or procedure to accept the finished work.

This same commenter stated that the additional language in Section 19(d) regarding a completion guaranty is not necessary and the language should be deleted. The commenter stated that the first part of the requirement – which requires a guarantor to complete construction if the contractor fails to do so – is redundant with the requirement to have a payment and performance bond and/or letter of credit in the previous sentence. The commenter stated that the second part of the requirement – to pay for costs that are above budget – also seems to be unnecessary as the budget and the scope of work have already been fixed in Exhibits B and D of the RCC. The commenter stated that the HAP Contract also requires that initial repairs be completed, and HUD’s remedy should not be enforced through a completion guaranty, but rather through termination of the RCC or the HAP Contract in the event the initial repairs are not completed. The commenter stated that for additional protection, HUD’s interest here may be better served by requiring that the construction contract be a guaranteed maximum price or stipulated sum contract to ensure that the work will be completed on budget. The commenter stated that requiring a guaranty to HUD will likely chill participation by developer partners and does not seem necessary in light of the other remedies available to HUD.

HUD Response: HUD appreciates these comments and has made clarifying adjustments to Exhibit D with complementary changes suggested in part to Sections 19 a, c and d.

RCC – Reserve for Replacements (Section 20)

A commenter suggested the following language for Section 20: “PHA and/or Project Owner shall establish upon closing a Reserve for Replacements. The Initial Deposit (IDRR) and the monthly deposits into the Reserve for Replacements will be made in the amount as established by the approved final physical needs capital assessment report and as set forth in the HAP Contract and adjusted annually in accordance with the HAP Contract and Program Requirements.”

Another commenter suggested the removal of “PHA and/or” consistent with the change they suggested in the opening paragraph regarding when the PHA will be referenced in the RCC as the Project Owner.

HUD Response: Within minor wording changes and taking into consideration changes made to the first page of the RCC, HUD has incorporated these comments.

RCC – Counsel (Section 21)

A commenter stated that the language requiring the PHA and the Project Owner to each select counsel should be deleted, as in many cases where the PHA controls the Project Owner separate counsel is not necessary. The commenter stated the new language in Section 21(d) expands the opinion to cover all pending or threatened litigation. The commenter stated that the opinion should be limited to litigation that might affect the project, rather than casting a wide net to any litigation the entity is involved in, such as landlord/tenant disputes in a Section 8 or non-RAD PHA project. The commenter

stated that, in addition, requiring HUD consent is overbroad and would require additional review by HUD of completely unrelated litigation, such as the aforementioned landlord/tenant disputes. The commenter stated that, with respect to Section 21(e), this opinion should be able to be based on a title policy or search, as is currently allowed by the model form RAD opinion and should also include a carve-out for items approved by HUD.

Another commenter stated that Section 21 requires PHA and Project Owner to have independent counsel, and that such considerations should be left to PHA and Project Owner to be decided within the context of state ethics law considerations. The commenter stated that Section 21(a)-(f) should align with and track the RAD Model Form Opinion of Counsel (the “Model Opinion”), and highlighted the differences between the two. The commenter stated that the opinion required at Section 21(e), raises the question of whether law firms are to provide opinions regarding lien priority has been something that has been considered extensively within the legal profession. The commenter stated that the American Bar Association, for example, has done an exhaustive review of opinion practices and on the point of lien priority has held that it is outside the purview of a law firm to give an opinion in this regard. The commenter stated that law firms do not undertake the title searches and do not undertake the process of recording documents, nor does a title policy run to the benefit of the law firm, negating the effect of a law firm's reliance on a title policy to give a lien priority opinion. The commenter stated that to give such an opinion arguably negates the effect of a firm's insurance policy. The commenter asked that HUD consider the alternative opinion offered by the commenter, and one that has been accepted by HUD previously.

HUD Response: HUD has made adjustments to this section and has adopted in part suggested language from the commenters especially noting changes to the opinion on title, recording order and superiority of the RAD Use Agreement.

RCC – Last Public Housing Unit

A commenter requested additional guidance to clarify how HUD will withhold HAP payments owed to the Project Owner for the PHA's failure to comply HUD instruction.

HUD Response: HUD is preparing to release a PIH Notice on close-out requirements for PHAs that are converting or have converted all of their public housing assistance. HAP Contracts specify remedies for breach.

RCC – Post Closing Responsibilities (Section 26)

A commenter stated it believes the timeframes added to this Section are not reasonable, and it is not in HUD's interest to impose such rigid timeframes. The commenter stated that depending on the jurisdiction adherence to these timeframes may not be possible and would set up a needless default.

Another commenter stated that post-closing timeframes contained in Section 26 are not realistic considering recording logistics and processes in many jurisdictions and should provide for a minimum of 3 business days for the initial submission of evidence of recording and 60 calendar days for the submission of the final RAD docket.

HUD Response: As suggested, HUD has lengthened the time for initial submission of evidence of recording and submission of the final RAD docket.

RCC – Counterpart (Section 28)

A commenter asked that HUD consider changing “Counterpart” to “Counterparts” throughout. With respect to the signature lines, the commenter suggested deleting the Owner signature block and directing the document drafter to obtain a signature block from the PHA or Owner. The commenter stated that the model is a corporate signature Block, and that, if the owner is a limited partnership, limited liability company, or other entity, the signature block is in an alternative form. The commenter stated it found that use of the signature block is a common error in RCCs. The commenter also commented on Exhibit B, and stated that HUD should consider not including a mandatory format or line items for the uses in Exhibit B. The commenter stated often there is needless time and energy invested in realigning the “uses” line items from a tax credit or other project budget to match with the preset categories. The commenter stated that this can lead to a few line items listed at large amounts and others zeroed out entirely which is not as descriptive as may be needed. The commenter stated that HUD should trust its transaction managers and closing coordinators to work with the PHA and Project Owner to insert a list of uses that balances with the list of sources that accurately reflect the subject project.

HUD Response: HUD has revised the section on Counterparts and improved the signature page to be consistent with the revised terminology in the RCC. HUD has also improved various aspects of the Exhibits to the RCC as suggested by the commenters.

RAD Use Agreement - Preamble and Section 17

A commenter stated that the new structure of the parties to the Use Agreement – an “Owner” and a “Lessee” is not consistent with the language in the RCC and with the way in which these projects will be operated. We suggest that the Use Agreement mirror

the structure reflected in the RCC and place the obligations on the Project Owner with the PHA added as needed to reflect that the PHA will be obligated under the Use Agreement in the event the Ground Lease is terminated. The commenter stated that the Project Owner under the Lease is the entity that will own and operate the project and should be the entity that is primarily obligated under the Use Agreement. The commenter stated that, as written, the Use Agreement primarily imposes responsibility on a party that does not have the capacity to enforce such obligations. The commenter strongly suggested that HUD rethink the structure of this Agreement, and requested that HUD look at the markup of this document the commenter provided.

HUD Response: HUD agrees with this comment and has revised the structure of the Use Agreement to make the primary signatory the Project Owner, consistent with the terminology and structure of the RCC. HUD has further revised the document to provide for the PHA, or other owner of the fee estate, to bind the fee interest in the case of a ground lease.

RAD Use Agreement – Section 3

A commenter stated that the language HUD added to Section 3 gives the impression that the tenants must be under 80 percent of area median income (AMI) for the remainder of the term. The commenter provided a markup of this section, which the commenter suggested provided greater clarity.

HUD Response: HUD is not changing the requirements as to tenant income. HUD notes that the tenant income requirements are consistent with the tenant income requirements of both the public housing and section 8 programs.

RAD Use Agreement – Sections 5 and 6

A commenter remarked on sections 5 and 6 (Responsibilities of Owners versus Owners' Agents) of the RAD Use Agreement and stated that it strongly agrees that Fair Housing, Civil Rights and Federal Accessibility Compliance are important priorities, but stated that these are the sole responsibility of the owner not its agents. The commenter recommended striking "and its agents" from paragraph's 5 and 6 of the Use Agreement.

HUD Response: Under law, agents are also responsible, but HUD agrees that the language was ambiguous and has revised this language to read that the project owner and its agents, where applicable, shall ensure that the project complies with the applicable laws.

RAD Use Agreement – Section 7

A commenter stated that the language in Section 7, Restrictions on Transfer, does not reference the owner's right to notice and right to cure, and that this should also be referenced explicitly in the HAP Contract. Another commenter stated that it found the insertion of the last sentence regarding 2 CFR Part 200 problematic and too vague. The commenter stated that it is unclear what HUD is trying to impose by the addition of this sentence. The commenter asked if HUD is trying to impose all procurement requirements, or the audit requirements. The commenter stated that neither the RAD Statute nor the RAD Notice make any mention of 2 CFR part 200, nor its predecessor part 85. The commenter stated that moreover, it does not believe that part 200 applies to Section 8 contracts generally and therefore it should not be implicated in the RAD Use Agreement. The commenter stated that HUD should either delete this section or specify which requirements are applicable to the RAD Projects.

Another commenter stated that in Section 7, references to “Project” without reference to Property should be replaced with “Property” or “Property and/or Project”. The commenter stated that in the third sentence, insert “on the Property” after “Any lien”. Considering revising the fourth sentence as noted below, and that in the fifth sentence, the last reference to “Property and/or Project” should not be capitalized since the stated property and/or project are not part of the defined terms. The commenter also requested guidance on who should receive the original RAD Use Agreement after recording.

HUD Response: HUD has deleted the specific reference to 2 CFR Part 200 and will provide more guidance on Part 200 in addition to the guidance found in the current RAD Notice. Changes were also adopted as to the references to Property and/or Project in Section 7. HUD is developing revised closing letter guidance to address issues such as distribution of original and copies of closing documents.

RAD Use Agreement – Section 8

A commenter suggested reinserting the ability to release the Use Agreement in the event of dedication of streets or public utilities. The commenter stated that this language and ability has been included in Declarations of Trust and helps to ensure a timely release of Declarations when necessary to provide utility or street access to the residents of the project. The commenter stated that since there is no formal process for disposition or release RAD Use Agreements, including this language will help these releases move forward until HUD can develop a more comprehensive policy and procedure regarding release. The commenter stated that HUD does not generally record the releases, but rather requires the Project Owner to ensure recordation. The commenter requested that HUD see its markup of this section of the document.

HUD Response: HUD has substantially revised the restrictions on transfer to cover the points noted by the commenter.

RAD Use Agreement – HAP Contract Termination

A commenter stated that HUD or the Contract Administrator has the discretion to terminate the HAP Contract for owner breach, and after termination, and that HUD may release owners from the Use Agreement, and strongly urged HUD to develop guidelines about when and how it will release owners from the Use Agreement, in order to ensure the long-term affordability of RAD properties. The commenter stated that the absence of guidelines governing HUD's discretion to approve exceptions to the automatic renewal of Use Agreement terms, as HAP Contracts are extended, raises risks to the long-term affordability of a development. The commenter strongly urged HUD to develop guidelines about when and how it will exercise this discretion, in order to ensure the long-term affordability of RAD properties.

HUD Response: HUD will further consider this request for more guidelines.

RAD Use Agreement – Affordability of rents at termination

A commenter urged HUD to require deeper affordability for rents for assisted units if the HAP Contract is terminated. The commenter stated that currently, where the HAP Contract is terminated by HUD or an administrator for breach, the Use Agreement only requires that new tenants have incomes at or below 80 percent of Area Median Income at admission and rents must not exceed 30 percent of 80 percent of AMI for an appropriate-sized unit. This weak restriction contrasts sharply with the 30 percent of actual tenant income standard applicable to public housing and Section 8, is virtually meaningless because rents do not generally reach that level in most rental housing

markets, and is waivable. The commenter stated that this means that the Use Agreement currently depends primarily upon the existence of the HAP Contract for its vitality, and that in case of HAP Contract termination deeper affordability restrictions should be incorporated into the Use Agreement in order to truly ensure long-term affordability. The commenter also stated that, if the project owner fails to rent a sufficient percentage of assisted units to low-income or very low-income tenants, HUD should not, in its sole discretion, reduce the number of units covered by the HAP Contract. The commenter stated that this action by HUD would fail to preserve the vital, long-term affordability of the property and would not properly sanction the property owner for failing to abide by the HAP Contract. The commenter concluded its comment on this subject by stating that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: HUD appreciates the commenters concerns. In setting requirements, HUD must balance several interests in order to provide for long term affordability. HUD believes the current provisions strike the appropriate balance.

Project-Based Rental Assistance (PBRA) Housing Assistance Payments Contract Part I and Part II (First Component)

Section 1.2(d): The commenter noted that Section 1.7.A.10 of the RAD Notice provides the owner the right to terminate the HAP if HUD determines that a statutory change affecting the rents will threaten the physical viability of the property. The commenter then noted that the changes to Section 1.2(d) of the HAP provide both the Contract Administrator and the Owner the ability to terminate the HAP, individually.

The commenter indicated that owners, lenders, and LIHTC investors have expressed concern over this unilateral decision making authority of the Contract Administrator, especially if the only issue is the inability to comply with Section 2.8 of the HAP (the required OCAF requirements). The commenter also noted that the revised HAP language does not capture the levels of impact regarding the statutory change in the RAD Notice. The commenter indicated that the RAD Notice provides that HUD will determine whether the statutory change will threaten the physical viability of the project, while the proposed HAP language merely states that the statutory change is inconsistent with Section 2.5(a)(1) and 2.8 of the HAP. To be consistent with the RAD Notice, the commenter provided revised language.

HUD Response: The language in this section of the HAP contract mirrors the language used for other HAP contracts in use in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). The language does not give HUD an unfettered ability to terminate the HAP contract. The language states that, should HUD determine that a statutory change prohibits the Contract Administrator from being able to comply with the funding provisions of section 2.5(a)(1) or 2.8 of the HAP Contract, then HUD may terminate the contract. Therefore, the provision gives HUD the ability to terminate the contract only in those instances where a statutory change prohibits the Contract Administrator from complying with the funding provisions of the contract. HUD has maintained the consistency between this contract and the MAHRA contracts.

Section 1.3(b)(1): The commenter requested clarification as to what the phrase “[a]t the end of the calendar year, HUD will provide the Owner written notification of the

amount of such funding” means. The commenter indicated that it is unclear to which funding this language is referring to. The commenter noted that if this language is referring to “any additional public housing amounts that HUD obligates,” then HUD would also have to deposit those funds with the PHA and direct the PHA to pay them to the Owner in addition to the funds identified through the Initial Year Funding Tool. The commenter requested additional clarification regarding the calendar year at the end of which HUD will provide written notification – at either the calendar year prior to or after closing. The commenter notes that if the intent is to do a reconciliation with the Owner at the end of the initial year, then such intent should be more clearly stated and instruction provided by the PHA and Owner.

HUD Response: HUD agrees with the commenter that this provision was confusing and has revised the language to clarify the intent. The language refers to the fact that during the year of conversion, a project is funded only from obligated public housing funds, which may not equal the amount of the amount of contract rents, adjusted with an operating cost adjustment factor that the owner will receive in later years of the contract. The language relating to public housing amounts obligated later in the calendar year refers to the fact that depending on the month a conversion occurs HUD may have obligated only part of the public housing funds due to the property for that fiscal year. HUD makes its public housing obligations pursuant to formula. If HUD were to obligate such additional funds and a PHA were to receive such additional funds, the funds received corresponding to the converting project would be used with the originally obligated funds for funding the converted project for the remainder of the calendar year.

Section 1.3(b)(2): A commenter stated that this paragraph is very confusing and difficult to follow, and suggested that HUD look at adding clarity to this language, perhaps by inserting the terms “Year of Conversion” and “First Full Year”.

HUD Response: HUD has revised the language to reflect the funding documents.

Section 1.4(d): A commenter stated that HUD may consider adding the initial repairs as an exhibit to the HAP Contract for consistency.

HUD Response: Exhibit F to the RCC, which is a legally binding contract between the owner and HUD, already contains this information.

Section 2.5: A commenter stated that clarification is needed that the Year of Conversion funding can be comprised of three different types of payments – HAP Payments, RAD Rehab Assistance Payments and Vacancy Payments. The commenter stated that the added language in these sections does not indicate that the amount of funding in the Year of Conversion will equal each of these, but rather the three items combined should not exceed the amount of funding available during the Year of Conversion. The commenter requested that HUD review its markup of this section. The commenter also stated that, with respect to the RAD Rehab Assistance Payment, it is the commenter’s understanding that units are eligible for that payment in the Year of Conversion; however, the new language indicates that no RAD Rehab Assistance Payments will be paid until the First Full Year. The commenter stated that it believed that this is not what HUD intended and asked HUD to look at its markup of this section.

HUD Response: HUD has considered these suggestions and made revisions concerning the amount of funding in the Year of Conversion and RAD Rehab Assistance Payment.

Section 2.5(b): A commenter requested that HUD reconsider requiring a date certain by which the RAD Rehab Assistance Payments must end and instead suggested they be tied to the completion of the Initial Repairs. The commenter also suggested that HUD consider eliminating the RAD Rehab Assistance Payment as a separate line item and instead allow this subsidy to be paid as a vacancy payment. The commenter stated that it believed that this would simplify budgeting and accounting for both HUD and owners. Another commenter provided two technical changes to this section.

HUD Response: With regard to allowing RAD Rehab Assistance Payments to be paid as a vacancy payment, HUD rejects this comment on the basis that Rehab Assistance Payments do not meet the legal requirements established in section 2.5(b) and (c) of the contract and in 24 CFR 880.611 for the receipt of vacancy payments. Whether to leave the provision intact in section 2.5(b) of the contract imposing a date certain on which Rehab Assistance Payments will cease, or instead to link their cessation to the completion of the initial repairs as the commenter urges, is a policy matter. Regarding both comments, these requirements are tied to the RAD Notice so, regardless, HUD will not change them. HUD accepts the two technical changes to the first sentence.

Section 2.7(c) -Replacement Reserve: A commenter suggested several changes to this section to better align it with the other RAD requirements and industry practice. The commenter stated that the current provisions do not match up with the requirements being imposed upon non-RAD HAP Contracts and in some instances directly conflict with the RAD Notice. The commenter urged HUD to issue additional guidance on this topic and ensure that its requirements are consistent.

The commenter commented on section 2.7(c)(1), stating that the deposit to the replacement reserve is not addressed in any of the applicable regulations, but rather is set in the RCC. The commenter suggested a change for clarity.

The commenter commented on 2.7(c)(1)(i), stating that this section addresses the escalation factor for the replacement reserve and references an automatic adjustment factor (AAF) and 24 CFR part 888. The commenter suggested that HUD revise this paragraph to align with the requirements of the RAD Notice and current practice with respect to escalations. The commenter stated that most deals have a replacement reserve escalator that is required by an investor or a lender. The commenter stated that moreover, the current practice for most PBCAs is to require that the replacement reserve be adjusted by OCAF, not the AAF. The commenter stated that none of the other RAD Guidance applies an AAF or part 888 to the RAD Program and the part 880 regulations as amended to apply to the RAD program similarly do not reference an AAF or part 888. The commenter therefore recommended that an approved escalation factor be included in the RCC and referenced in the HAP Contract, or at least a general “approved by HUD” reference added.

The commenter also commented on section 2.7(c)(1)(v), stating that it is not aware of any HUD procedures with respect to obtaining HUD approval for use of the replacement reserve. The commenter stated that it does not seem to be required by the RAD Notice or RCC and the commenter suggested deleting this requirement, or alternatively publishing guidance as to how and when these approvals can be obtained.

The commenter also commented on section 2.7(c)(2) stating that this directly contradicts the RAD Notice, which says that the FHA Regulatory Agreement shall apply. The commenter requested that HUD revise for consistency.

HUD Response: HUD agrees with the commenter in part and has revised section 2.7(c) to clarify requirements.

Section 2.9 Marketing and Leasing of Units:

A commenter suggested several changes in a markup intended to achieve conformance with the RAD Notice and underlying regulations.

HUD Response: HUD accepts the proposed revision to section 2.9(c)(3) of the contract as it provides useful clarification. The proposed change to section 2.9(c)(5)(ii) is rejected on the basis that the phrase the commenter urges HUD to replace, “total housing expense,” even though it is not a defined term, is used historically in project-based section 8 HAP Contracts.

Section 2.11 Reduction of Number of Units for Failure to Lease to Eligible Families:

A commenter stated that if the project owner fails for a continuous period of 6 months to have at least 90 percent of the assisted units leased or available for leasing by eligible families, HUD should not reduce the number of units covered by the HAP Contract (Part II, page 7). The commenter stated that such action by HUD would fail to preserve the vital, long-term affordability of the property and does not properly sanction the property owner for failing to abide by the HAP Contract. The commenter urged HUD to amend the PBRA model lease, and require its use at all RAD properties nationwide, to include the key tenant protections under the RAD program (i.e., the right to remain/

return, no rescreening upon conversion, lease renewals, phase-in of tenant rent increases, relocation assistance, tenant participation, tenant grievance procedures, and choice mobility). The commenter stated that this would help to eliminate the wide variety of terms and formats of RAD property owner leases (Part II, page 6). The commenter also stated that any reports that are required by HUD or the PHA should also be required to be made available upon request and notification to current tenants (Part II, page 9), and that the HAP Contract should also require an investigation by HUD or the Contract Administrator if more than 20 percent of the current tenants, or the tenant organization, submit a request for such an investigation to the property owner, PHA, or HUD regarding issues relating to tenant participation or their living environment.

HUD Response: HUD's authority under section 2.11(b) is discretionary, not mandatory, and has regulatory backing in 24 CFR 880.504(b)(ii). On this basis, HUD rejects this comment. Whether to amend the model lease to include the key tenant protections of Component 1 is a policy matter. However, section 1.7.B.6. of the RAD Notice already requires that the majority of tenant protections to which the commenter refers be included in the House Rules, which must be attached to the model lease; therefore, no revisions to the HAP Contract have been made. Tenant's interests in participation in multifamily housing projects are adequately protected in 24 CFR Part 245, which does not require that any reports that are subject to section 2.16 of the contract be made available to them. On this basis, HUD rejects these comments and further notes that 24 CFR Part 245 does not require that tenants be afforded a right to request an investigation.

Section 2.12(b): A commenter stated that this paragraph is overly broad and vague and HUD's underlying concern is adequately addressed in other sections. The commenter stated that the owner is required to comply with both the Fair Housing Act as well as Title VI and so is already prohibited from unlawful discrimination. The commenter stated that while this paragraph was included in the original PBRA HAP Contracts, the landscape of civil rights has changed dramatically in the past 35 years, and that leaving such terms undefined in today's fair housing and non-discrimination landscape is very concerning. The commenter stated that a strict reading of this could put the Owner in violation of the HAP Contract for excluding high-income persons from participation under the HAP Contract, since under the broad undefined meaning of the word "class," high-income individuals could qualify. The commenter stated that while this example is certainly absurd given the purpose of the document there are other examples that are just as problematic when a charged term such as "class" is left open-ended. The commenter stated that HUD should, and should allow owners to, rely upon the existing laws, regulations and other guidance that exists with respect to non-discrimination in federally subsidized housing to define protected classes and set forth the obligations on nondiscrimination.

HUD Response: The comment urging the deletion of section 2.12(b) is accepted.

Section 2.14: A commenter stated that it agrees that restoration should be required; however, the commenter stated that additional language regarding feasibility of restoration, beyond simply "to the extent proceeds permit" is advisable. The commenter stated that most lenders have a process or procedure for determining feasibility that will likely conflict with this sentence. The commenter recommended that HUD look to the

Mixed Finance ACC Amendment currently in use for the public housing program as a model.

HUD Response: HUD has amended this section informed by the comment.

Section 2.20 - Assignment, Sale, Foreclosure, or Deed in Lieu of Foreclosure: A commenter stated that the provisions of this section do not line up with current HUD requirements in Chapter 13 of Handbook 4350.1, which discusses when HUD consent is required for a transfer. The commenter stated that these requirements should be consistent and more importantly should facilitate transfers that are customary of limited partner interests in tax credit projects. The commenter stated that the 2530 previous participation process also recognizes that it does not need to give clearance to limited investor partners or members, but rather allows such entities to file limited liability corporate investor certifications (LLCI) . The commenter stated that it believes that this section should be updated to reference the LLC corporate form which many RAD owners take. The commenter stated that this section should note the exceptions that are now contained in Sections 2.24 and 2.25 (which were previously the Lender and Investor riders to the HAP Contract).

HUD Response: HUD has clarified the requirements in this section.

Section 2.24(a): The commenter suggested HUD replace “against the project” with “encumbering the property on which the project is located.” The commenter also suggested that subsections be added to Section 2.24 to provide the holder of any HUD-approved mortgage with the same notice and cure rights that are provided the Equity Investor in Sections 2.25(a) and (b).

HUD Response: HUD accepts these technical revisions.

Section 2.25(c) and (d): The commenter noted that the HUD required language for partnership agreements states that no transfer in the general partner is permitted without the prior written consent of HUD. They suggested that HUD revise the required language to be included in partnership agreements to be consistent with Section 2.25(c) and (d). The commenter also requested that the HUD required language for partnership agreements be posted online.

HUD Response: HUD agrees with the comment pertaining to the interplay between section 2.25 and the HUD required provisions relating to ownership and control that are inserted into limited partnership agreements (LPAs) and operating agreements. HUD will be updating these HUD-required provisions.

Third party beneficiary concerns: The commenter stated that HUD should remove the exclusion of third party beneficiary rights from the HAP Contract, and instead provide that a family that is eligible for housing assistance under the HAP Contract should be a third party beneficiary of the HAP Contract. The commenter stated that this change would drastically improve enforcement, and reduce HUD's administrative burdens, in enforcing the terms of the contract, and that making this change would also closely align with the RAD Use Agreement, which allows any eligible tenant or applicant for occupancy within the project, in addition to the HUD Secretary or his or her successors or delegates, to institute proper legal action to enforce performance of its provisions. The commenter stated that it is critical that tenants have a tool to access justice in order to preserve their tenancy and ensure the long-term affordability of their property after RAD conversion.

HUD Response: HUD rejects the comment suggesting that assisted families be made third-party beneficiaries to the contract.

A commenter encouraged HUD to revise all references to Notice PIH 2012-32 (HA) to reference Notice PIH 2012-32 (HA) (REV-2) and all subsequent revisions to the RAD program through applicable statutes, regulations, and policies.

HUD Response: HUD agrees and has made changes to section 1.2(c).

A commenter suggested that the HAP Contract should specify that RAD projects are also subject to the fair housing laws and definitions of protected classes under state and local law.

HUD Response: The contract has been revised to require compliance with all applicable civil rights laws, including fair housing laws. However, HUD has no legal duty or authority to enforce state or local laws.

A commenter stated that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: This contract is a form document minimally tailored to the specific situation. Further, it is a contract between HUD and the owner. Neither tenants nor tenant advocacy groups are parties to or third-party beneficiaries of the contract. HUD rejects the comment, but emphasizes that PHAs must provide sufficient detail about proposed RAD projects in their PHA or MTW plans, including information about tenant contributions to rent and tenant protections.

Project-Based Voucher (PBV) Rider to PBV HAP Contract (First Component)

First Component: A commenter noted that most references are to “HAP Contract,” but some places only use “Contract,” and that the document should be consistent throughout. The commenter suggested using “HAP Contract” throughout.

HUD Response: HUD has changed all references to “HAP Contract”.

Section 3(g) – Revising Section 4 – Funding of HAP Contract: A commenter stated that it believes that HUD could further clarify this section using the new terms. They indicated this in an attached markup. The commenter stated that the section numbering is very confusing, particularly the insertion of a new Section 4(a) and 4(b) via Section 3(g) – but without identifying or otherwise signifying that Section 4 is part of Section 3. The commenter asked HUD to revisit the formatting.

HUD Response: HUD accepts these changes and made appropriate amendments to the funding language and numbering.

Section 3(j)(3): A commenter stated that the last sentence should read “. . . successor provisions whether or not explicitly stated.”

HUD Response: HUD accepts this suggested change.

Section 3(r): A commenter stated that this section duplicates the updated PBV Regulations, and asked that HUD remove this section.

HUD Response: HUD rejects the suggested change. The Rider language is essential because the underlying PBV HAP Contract has yet to incorporate the regulatory change. Therefore, the Rider needs to reflect the current requirement, which protects tenants by preventing non-renewal of a lease unless the owner has a good cause.

Section 3(s): A commenter asked that HUD revise Section 10.4.b (PHA owned units) to cover only inspections. The commenter stated that PHA owned units are any units in which a PHA is in the ownership structure (even if only as a special limited partner). The commenter stated that the Rider requires PHA-owned units to follow 24 CFR 983.59, but that the section states that rents for PHA owned units must be determined by an independent third party approved by HUD. The commenter stated that in RAD, HUD sets the initial rents and inflates by OCAF, and an independent third party adds an expense and administrative burden to the project while having no power to override HUD's own calculations.

HUD Response: HUD rejects this comment. The RAD Notice requires a rent reasonableness review, which would have to be done by an independent entity.

Section 3(v) – Revising Subsection 21.a.2: A commenter stated that this section should be limited to new liens on the property.

HUD Response: HUD accepts this suggestion.

Section 4(a): A commenter stated that clarity is needed with respect to the new language added to this section. The commenter stated that its understanding is that in the Year of Conversion that the funding may be made up of three sources – HAP payments, vacancy payments, and Rehab Assistance Payments. The commenter stated that the sum of these sources cannot exceed the public housing funds previously obligated to the project, but the language as written indicates that no Rehab Assistance Payments will be made in the Year of Conversion. The commenter stated that this is not how the deals have been underwritten so far and this should be clarified. The commenter also suggested that

HUD consider eliminating the RAD Rehab Assistance Payment as a separate item and instead make it a vacancy payment.

Another commenter noted that, assuming the language will mirror Section 2.5(b) of the PBRA HAP, HUD should replace “has not received” with “is not otherwise receiving.”

HUD Response: HUD has clarified this section in response to these comments. With regard to eliminating the RAD Rehab Assistance Payment as a separate item, and instead make it a vacancy payment, HUD rejects this suggestion. The Rehab Assistance Payment is not a vacancy payment. HUD agrees with commenter’s technical comment and made the change to “is not otherwise receiving.”

Section 4(b): A commenter asked that HUD delete this requirement to have the PHA board approve the PBV operating budget. The commenter stated that this is not required for regular PBV, PHA Owned PBRA projects, or any non-public housing projects and should not be required in this context. The commenter stated that this is not a function that the board normally performs and is more appropriately delegated to the staff hired to run the operations of the PHA. The commenter stated that this requirement is burdensome to the PHA boards and requires the directors, who may not have any particular expertise in operations, to insert themselves in an inappropriate and unhelpful way.

HUD Response: This is a specific requirement in Section 1.6.D.2 of the RAD Notice. The Rider simply reflects the RAD Notice.

Section 4(c): A commenter suggested that additional language regarding feasibility of restoration, beyond simply “to the extent proceeds permit” be added. The commenter stated that most lenders have a process or procedure for determining feasibility that will likely conflict with this sentence. The commenter recommended that HUD look to the Mixed Finance ACC Amendment currently in use for the public housing program as a model.

HUD Response: HUD has amended this section informed by the comment.

Section 4(e): A commenter stated that the citation to 1.B.2.B is confusing and asked HUD to consider revising to 1.B.2.B.

HUD Response: HUD accepts this suggestion.

Section 4(g): A commenter stated the language in this section is far too general, and the language should describe specific requirements, cite to the regulatory source of requirements, or cross-reference to the RCC.

HUD Response: HUD accepts this suggestion, and has cross-referenced the RCC.

Transfer of a contract or project: A commenter urged HUD to require the RAD property owner to receive express written approval from HUD in order to transfer the contract or the project, which is required under the RAD PBRA HAP Contract, because such fundamental alterations should be part of HUD’s important nationwide oversight role. The commenter stated that currently, the PBV HAP Contract only requires approval in “accordance with HUD requirements.” The commenter stated that HUD should have stronger protections for transfers of member interests in ownership entities utilizing Low Income Housing Tax Credits. Transfer of investor members/ partners is not considered a default under the HAP Contract or Use Agreement if HUD receives both prior written

notice and copies of documents regarding transfer. The commenter stated that instead, HUD should have a requirement for prior written approval from HUD before owners can transfer these interests, which is currently required under the RAD PBRA HAP Contract.

HUD Response: The underlying PBV HAP Contract (Form 525030A (Part 1) and Form 525030B (Part 2)) requires in Section 21 that the owner receive “written consent” of the PHA prior to transferring the HAP Contract or property. Section 4(t) of the Rider specifically adds a requirement for HUD consent respect to Section 21. In other words, just as the commenter suggests, HUD’s written consent is required. With respect to the provisions relating to transfers of interests in the ownership entities, HUD has reviewed and revised these provisions in response to this and similar comments.

A commenter stated that for RAD PBRA properties, the HAP Contract continues in existence in the event of any disposition of the project or foreclosure, unless HUD uses its discretion to approve otherwise. The commenter stated that it greatly supports this strong protection of long-term affordability of RAD properties, and urged HUD to require the same for RAD PBV properties, or at the very least, develop guidelines about when and how it will exercise this discretion, in order to ensure the long-term affordability of RAD properties.

HUD Response: HUD agrees and has added modified language from section 2.20(f) of the PBRA HAP Contract to the PBV Rider (which adds a new section 38 to the HAP Contract).

A commenter urged HUD to clarify how tenants will be protected in the event of foreclosure, bankruptcy, transfer of assistance, or substantial default. The commenter questioned whether the HAP Contract and subsidy could be quickly transferred to another

owner or to another building, and that, if necessary, would current tenants receive tenant protection vouchers and relocation assistance? The commenter further stated that PBRA HAP Contract provisions are more explicit and protective of tenants than the PBV HAP Contract regarding the provision of replacement housing assistance, and urged HUD to include similar strong tenant protections in the PBV HAP Contract as well. The commenter concluded its comment on this issue by stating that HUD should require PHAs to seek input from and make this document available to tenants and local tenant advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: As discussed above, HUD has decided to add language regarding continuation of the HAP Contract in a new section 38. With respect to transfer policy and tenant protections, these policies are properly addressed through RAD Notices and guidance, not contractual language. The suggestion regarding tenant input and the availability of documents is also not relevant to contractual modifications. These issues will be addressed in RAD Notices and guidance. Regardless, the Rider would not be modified by tenant input. It is a HUD form that must be used verbatim. Any changes to the form must be approved by HUD.

Sections 6 and 7: A commenter suggested that subsections be added to Section 6 to provide the holder of any HUD-approved mortgage with the same notice and cure rights that are provided the Equity Investor in Sections 7(a) and (b). The commenter suggested that prior to these two sections, language should be added similar to that found in throughout Section 4 to clarify that new sections are being added to the HAP. Additionally, the commenter suggested that “Owner” be capitalized throughout the two sections.

HUD Response: HUD has declined to make the change to provide notice to the mortgage holder because unlike the equity investor, the mortgage holder is not participating in the organizational structure of the ownership entity. HUD believes the added lender provisions are adequate to address lender concerns. Regarding the technical revision, HUD has revised the document accordingly.

Section 29 – Contract Administrator Board of Approval: A commenter commented on Section 29, Contract Administrator (CA) Board of Approval. The commenter stated that the requirement that the contract administrator's board must approve the operating budget for the covered project is onerous and not in line with other HUD Programs. The commenter stated that this is not required by HUD in other similar contexts including PBV, PBRA or Mixed-Finance and simply adds an additional layer of process and expense. The commenter stated that a PHA can set up its own internal policies to have its board review the operating budget if it so wishes, but this should be on a voluntary basis, and therefore HUD should eliminate Section 29.

HUD Response: This is a specific requirement in Section 1.6.D.2 of the RAD Notice. The Rider simply reflects the RAD Notice.

Extraneous Administrative Procedures: A commenter commented on what it referred to as extraneous administrative procedures in the PBV Contract Rider. The commenter stated that the PBV Contract Rider should take additional steps to remove unnecessary PBV administrative procedures that are not relevant for RAD, and provided, as an example, that the rider should explicitly exempt RAD properties from annual rent confirmation studies. The commenter stated that since rents are set by formula this is not relevant and simply adds additional expense and administrative procedure. The

commenter recommended that HUD eliminate annual rent confirmation study requirement for RAD.

HUD Response: The RAD Notice at Section 1.6.B.6 specifically requires that rent reasonableness continue to be performed. This is a distinct requirement, apart from any OCAF adjustment.

PBRA Housing Assistance Payments Contract Part I and Part II (Second Component-Mod Rehab, Rent Supp, and RAP properties)

The commenter stated that HUD should take steps to reevaluate the length of the owner's commitment under Second Component conversions to align with the mandatory HAP Contract renewal requirements of the First Component. The commenter stated that, for example, as stated in the PBRA Housing Assistance Payments Contract for the RAD First Component conversions: "The Owner acknowledges and agrees that upon expiration of the initial term of the Contract, and upon expiration of each renewal term of the Contract, the Owner shall accept each offer to renew the Contract, subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal." The commenter stated that the current PBRA HAP Contract for the RAD Second Component conversions only mentions each renewal term in accordance with the HAP Contract, RAD Notice, all statutory requirements, and all HUD regulations and other requirements. The commenter further stated that in order to ensure clarity and long-term affordability of the converted RAD Second Component property, HUD should explicitly state the language quoted above.

HUD Response: HUD rejects the comment that suggests HUD take steps to reevaluate the length of the owner's commitment under Second Component conversions

on the basis that owners of section 8 projects converted under Component Two have a right under section 8(c)(8)(A) of the United States Housing Act of 1937 to opt out of the section 8 program at the end of the initial term or of any renewal term.

Two commenters made the same suggestions for Component 2 as they did for Component 1 regarding amendments to the PBRA model lease, availability of reports that are required by HUD or by the PHA, and investigations by HUD or the Contract Administrator.

HUD Response: HUD's takes the same position on these Component 2 comments as it did for identical comments to Components 1 described above.

Section 2.1(d): A commenter suggested that HUD replace "the preceding sentence" with "Section 2.1(c)."

HUD Response: This technical correction, which HUD accepts and has made, concerns only the PBRA HAP Contract for Conversions of Moderate Rehabilitation.

Project-Based Voucher (PBV) Rider to Existing PBV HAP Contract (Second Component)

A commenter stated that similar to the language that is on page 6 of the PBV Rider for RAD First Component properties, the commenter urges HUD to incorporate tenant participation rights into this Second Component rider that protects tenants' right to participate and receive funding for legitimate resident organizations. The commenter stated that this language should reflect the language and rights discussed in Attachment 1B of the RAD Notice. The commenter stated that although the RAD Notice does not explicitly discuss RAD Component 2 tenants' participation rights, these rights are

independent rights that exist in the PBV program including and beyond RAD conversions. The commenter further stated that, for RAD PBRA properties, the HAP Contract continues in existence in the event of any disposition of the project or foreclosure, unless HUD uses its discretion to approve otherwise. The commenter added that it greatly supports this strong protection of long-term affordability of RAD properties, and urged HUD to require the same for RAD PBV properties, or at the very least, develop guidelines about when and how it will exercise this discretion, in order to ensure the long-term affordability of RAD properties. The commenter concluded its statement on this subject by stating that HUD should require PHAs to seek input from and make this document available to tenants and local advocates prior to conversion and at any time thereafter upon informal request.

HUD Response: The comment regarding tenant participation rights is inaccurate. The PBV program does not provide for funding for tenant organizations. The RAD Notice limits the requirement to Component 1 and this requirement is imposed pursuant to the statutory language governing Component 1. HUD rejects the second comment requiring the HAP Contract in RAD PBV properties to continue in the existence in the event of any disposition of the project or foreclosure. There are special considerations in Component 1 that are not present in Component 2. Component 2 is generally designed to follow the regular PBV program. Consistent with the special considerations under Component 1 the Rider imposes many provisions that differ from regular PBV. It is important to note that PHAs, not HUD, make most of the major policy determinations regarding PBV under both the regular PBV program and Component 2. HUD will consider this issue prospectively. The suggestion regarding tenant input and the

availability of documents is also not relevant to contractual modifications. These issues will be addressed in RAD Notices and guidance. Regardless, the Rider would not be modified by tenant input. It is a HUD form that must be used verbatim. Any changes to the form must be approved by HUD.

Income Mixing: A commenter stated that, the RAD Component 2 PBV rider, section 4F, regarding income mixing, provides “the excepted unit provisions in the PBV regulations generally apply to RAD projects” and then mentions the supportive services exceptions. The commenter asked whether this language is referring to the RAD Notice statement that “an owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families eligible to receive supportive services, or are within single-family properties,” and, if so, it would be helpful to the reader if the section includes a description of the exception.

HUD Response: The Rider provision in question refers to both the statutory and regulatory provision on income mixing. Those provisions clearly state the income mixing requirements. The purpose of the Rider provision is to simply state the modifications to these requirements, as detailed in Sections 2.5.C. and 3.5.C. of the RAD Notice. The suggestion is rejected.

Suggested Edits to RAD Closing Documents

The following commenters, 0021-0005, 0021-0006, and 0021-0007, offered specific language to the RAD closing documents.

HUD Response: HUD greatly appreciates all of these drafting suggestions and has incorporated many of them as described in this notice.

IV. Evaluation of Proposed Information Collection

A. Overview of Information Collection

Title of Information Collection: Rental Assistance Demonstration (RAD) Documents

OMB Approval Number: 2502-0612

Type of Request: Revision of a currently approved collection

Form Number: N/A

Description of the need for the information and proposed use: Rental Assistance

Demonstration (RAD) allows Public Housing, Moderate Rehabilitation (MR), Rent Supplement (RS), and Rental Assistance Payment (RAP) properties to convert to long-term project-based Section 8 rental assistance contracts. Participation in the demonstration is voluntary.

Participating Public Housing Agencies (PHAs) and Multifamily Owners are required to submit documentation for the purpose of processing and completing the conversion. Through these documents (collectively, the RAD documents), HUD evaluates whether the PHA or owner has met all of the requirements necessary to complete conversion as outlined in the RAD Notice.

The RAD processing request is made through a Web-based portal. Overall, the RAD documents and information requested through such documents allow HUD to determine which applicants continue to meet the eligibility and conversion requirements. Finally, all applicants will be required to sign the appropriate contractual documents to complete conversion and bind both the applicant and HUD, as well as set forth the rights and duties of the applicant and HUD, with respect to the converted project and any payments under that project.

Respondents: State, Local or Tribal Government entities, Public Housing Agencies and multifamily owners.

Information Collection	Number of Respondents	Annual Responses	Total Responses	Burden Hours Per Response	Total Burden Hours	Salary (per hour)	Total Burden Cost
PBV HAP Contract Rider – Public Housing Conversions	250	1	250	1	250	\$41	\$10,250.00
PBRA HAP Contract – Public Housing Conversions Parts I + II	250	1	250	1	250	\$41	\$10,250.00
RAD Use Agreement	500	1	500	1	500	\$41	\$20,500.00
RCC	500	1	500	1	500	\$41	\$20,500.00
Financing Plan (including Accessibility and Relocation Plan Checklist)	500	1	500	10	5000	\$41	\$205,000.00
PBRA HAP Contract – Mod Rehab Conversions Parts I & II	35	1	35	1	35	\$41	\$1,435.00
PBRA HAP Contract – Rent Supp and RAP Conversions Parts I & II	35	1	35	1	35	\$41	\$1,435.00
PBV Existing Housing HAP Contract Rider – Mod Rehab, Rent Supp, RAP (second component rider)	70	1	70	1	70	\$41	\$2,870.00
TOTALS	2,140		2,140		6,640.00		\$272,240.00

B. Solicitation of Comment

HUD will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility and clarity of information to be collected; and,

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g. permitting electronic submission of responses.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

The documents that currently comprise the RAD documents can be viewed at the RAD website: www.hud.gov/rad/. These documents are those that are currently used for RAD processing.

Dated: September 23, 2016

Inez C. Downs
Departmental Reports Management Officer
Office of the Chief Information Officer

[FR-5909-N-69]

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